

BILL LOCKYER, Attorney General  
of the State of California  
JOSE R. GUERRERO  
Supervising Deputy Attorney General  
VIVIEN H. HARA  
State Bar No. 084589  
Deputy Attorney General  
California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-5513  
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**NELSON M. TUMANDA, P.T.A.**

Physical Therapist Assistant License No. AT 6004

Respondent.

Case No. 1D-2004-64027

OAH No. N2006030610

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
above-entitled proceedings that the following matters are true:

**PARTIES**

1. Steven K. Hartzell (Complainant) is the Executive Officer of the Physical  
Therapy Board of California. He brought this action solely in his official capacity and is  
represented in this matter by Bill Lockyer, Attorney General of the State of California, by Deputy  
Attorney General, Vivien H. Hara.

2. Respondent Nelson M. Tumanda (Respondent) is represented in this  
matter by Edgardo Gonzalez, Esq., 1300 Clay Street, Oakland, California 94612.

3. On January 22, 2001, the Physical Therapy Board of California issued  
Physical Therapist Assistant License No. AT 6004 to Respondent. This license will expire on  
September 30, 2006, unless renewed.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**JURISDICTION**

4. The accusation in this matter was filed before the Physical Therapy Board of California (Board), Department of Consumer Affairs, on December 20, 2005. The accusation and all other statutorily required documents were properly served on Respondent on December 20, 2005. Respondent timely filed his Notice of Defense on December 28, 2005. This accusation is currently pending against Respondent and a copy is attached as Exhibit A and incorporated here by reference.

**ADVISEMENT AND WAIVERS**

5. Respondent has carefully read and understands the charges and allegations in the Accusation. Respondent has also carefully read and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

**CULPABILITY**

8. Respondent admits that during the years 2001 through 2003, while employed as a physical therapist assistant at Washington Outpatient Rehabilitation Center, he engaged in a pattern of treating patients without obtaining co-signatures or documented case consultations from supervising physical therapists and performed evaluations and reports, such as lower extremity evaluations, progress reports, and even discharge summaries, which could only be performed and reported by a physical therapist. Respondent also admits that at times, he was the only licensed professional on the premises of Washington Outpatient Medical Center, while

physical therapy aides were performing patient-related tasks. Respondent admits that these his conduct was in violation of Title 16 California Code of Regulations sections 1398.44, 1398.44(d), 1398.44(f), 1398.44(g), and 1399. Respondent further admits that his acts were in violation of Business and Professions Code section 2630 and Title 16 California Code of Regulations section 1398.44 in that he exceeded the scope of his licensure and performed these tasks without supervision, thereby practicing physical therapy without a license. These admissions are limited to these proceedings and to any other administrative proceedings pertinent to professional licensure and shall not be admissible in any civil or criminal proceedings.

9. Respondent agrees that his Physical Therapist Assistant License is subject to discipline and he agrees to be bound by the Physical Therapy Board of California (Board) 's imposition of discipline as set forth in the Disciplinary Order below.

## CONTINGENCY

10. This stipulation shall be subject to approval by the Physical Therapy Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Physical Therapy Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

1. **Community Service.** Within 180 days after the effective date of this Decision, Respondent shall provide 40 hours of community service without compensation within the State of California as part of the probation. Respondent shall submit for prior approval a community service program to the Board or its designee.

3. **No Home Care.** Respondent shall not provide physical therapy services in a patient's home.

5. **Probation Monitoring Costs.** Respondent shall reimburse actual costs incurred by the Board for probation monitoring up to \$150.00 per quarter during the entire period of probation. Respondent will be billed at least quarterly. Such costs shall be made payable to the Physical Therapy Board of California. Failure to make the ordered reimbursement within 60 days of the billing shall constitute a violation of the probation order.

4

1 event Respondent fails to pay within ninety (90) days of the effective date of this Decision, the  
2 full amount of costs shall be immediately due and payable. Failure to pay the ordered  
3 reimbursement, or any agreed upon payment, may constitute a violation of the probation order.  
4 The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to  
5 reimburse the Board. If Respondent is in default of his responsibility to reimburse the Board, the  
6 Board will collect cost recovery from the Franchise Tax Board, the Internal Revenue Service, or  
7 by any other means of attachment of earned wages legally available to the Board. Failure to fulfill  
8 the obligation could also result in attachment to Department of Motor Vehicle registrations and  
9 or license renewals.

10           7.     **Obey All Laws.** Respondent shall obey all federal, state and local laws,  
11 and statutes and regulations governing the practice of physical therapy in California.

12           8.     **Compliance with Orders of a Court.** Respondent shall be in compliance  
13 with any valid order of a court. Being found in contempt of any court of any court order is a  
14 violation of probation. Respondent shall not violate any terms and conditions of any criminal  
15 probation and shall be in compliance with any restitution ordered, payments, or other orders.

16           9.     **Quarterly Reports.** Respondent shall submit quarterly declarations  
17 under penalty of perjury on forms provided by the Board, stating whether there has been  
18 compliance with all the conditions of probation.

19           10.    **Probation Monitoring Program Compliance.** Respondent shall comply  
20 with the Board's probation monitoring program.

21           11.    **Interview with the Board or its Designee.** Respondent shall appear in  
22 person for interviews with the Board, or its designee, upon request at various intervals and with  
23 reasonable notice.

24           12.    **Notification of Probation Status to Employers.** The respondent shall  
25 notify all present or future employers of the reason for and the terms and conditions of the  
26 probation by providing a copy of the Accusation and the Decision and Order (stipulated  
27 settlement) to the employer and shall submit written employer confirmation of receipt within ten  
28 (10) days of the effective date of this Decision from any present employer and within ten (10)

1 days of the date of employment for any future employers. The notification(s) shall include the  
2 name, address and phone number of the employer, and, if different, the name, address and phone  
3 number of the work location.

4 13. **Notification of Change of Name or Address.** The respondent shall  
5 notify the Board, in writing, of any and all changes of name or address within ten (10) days.

6 14. **Restriction of Practice - Temporary Service Agencies.** Respondent  
7 may only practice in a supervised structured environment. The respondent shall not work for a  
8 temporary services agency or registry.

9 15. **Use of Aliases Prohibited.** Respondent may not use aliases and shall be  
10 prohibited from using any name which is not his legally-recognized name or based upon a legal  
11 change of name.

12 16. **Intermittent Work.** If the respondent works fewer than 192 hours in a  
13 period of three months, those months shall not be counted toward satisfaction of the probationary  
14 period. The respondent shall notify the Board if he works fewer than 192 hours in a three-month  
15 period.

16 17. **Tolling of Probation.** The period of probation shall run only during the  
17 time respondent is practicing within the jurisdiction of California. If, during probation,  
18 respondent does not practice within the jurisdiction of California, respondent is required to  
19 immediately notify the probation monitor in writing of the date that respondent's practice is out  
20 of state, and the date of return, if any. Practice by the respondent in California prior to  
21 notification to the Board of the respondent's return will not be credited toward completion of  
22 probation. Any order for payment of cost recovery shall remain in effect whether or not  
23 probation is tolled.

24 18. **Violation of Probation.** If respondent violates probation in any respect,  
25 the Board, after giving respondent notice and the opportunity to be heard, may revoke probation  
26 and carry out the disciplinary order that was stayed. If an accusation or petition to revoke

27 ///

28 ///

1 probation is filed against respondent during probation, the Board shall have continuing  
2 jurisdiction until the matter is final, and the period of probation shall be extended until the matter  
3 is final.

4                   19.     **Request to Surrender License Due to Retirement, Health, or Other**  
5 **Reasons.** Following the effective date of his probation, if Respondent ceases the practice  
6 physical therapist assistant due to retirement, health, or for other reasons, respondent may request  
7 to surrender his license to the Board. The Board reserves the right to evaluate Respondent's  
8 request and to exercise its discretion whether to grant the request or to take any other action  
9 deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the  
10 tendered license, the terms and conditions of probation shall be tolled until such time as the  
11 license is no longer renewable, Respondent makes application for the renewal of the tendered  
12 license, or Respondent makes application for a new license.

13                   20.     **Completion of Probation.** Upon successful completion of probation,  
14 respondent's license or approval shall be fully restored.

15                   21.     **Practice or Performance as a Physical Therapist Assistant While on**  
16 **Probation.** It is not contrary to the public interest for the respondent to practice and/or perform  
17 as physical therapist assistant under the probationary conditions specified in this disciplinary  
18 order. Accordingly, it is not the intent of the Board that this order, the fact that the respondent  
19 has been disciplined, or that the respondent is on probation, shall be used as the sole basis for any  
20 third party payor to remove Respondent from any list of approved providers.

#### 21                                   **ACCEPTANCE**

22                   I have carefully read and considered the Stipulated Settlement and Disciplinary  
23 Order. I understand the stipulation and the effect it will have on my Physical Therapist Assistant  
24 License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly,

25 ///

26 ///

27 ///

28 ///

1 and intelligently, and agree to be bound by the Decision and Order of the Physical Therapy Board  
2 of California.

3 DATED: July 14, 2006.

5 Original Signed By:  
6 NELSON M. TUMANDA  
Respondent

8 I have read and fully discussed with Respondent Nelson M. Tumanda the terms  
9 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
10 Order. I approve its form and content.

11 DATED: July 14, 2006.

13 Original Signed By:  
14 EDGARDO GONZALEZ, ESQ.  
Attorney for Respondent

16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
18 submitted for consideration by the Physical Therapy Board of California of the Department of  
19 Consumer Affairs.

20 DATED: July 14, 2006.

21 BILL LOCKYER, Attorney General  
22 of the State of California

23 Original Signed By:

24 VIVIEN H. HARA  
Deputy Attorney General

25 Attorneys for Complainant



**Exhibit A**

**Accusation in Case No. 1D 2004 64027**

BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**NELSON M. TUMANDA, P.T.A.**

Physical Therapist Assistant License No. AT 6004

Respondent

Case No. 1D-2004-64027

OAH No. N2006030610

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Physical Therapy Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 13, 2006.

It is so ORDERED August 14, 2006.

Original Signed By:

FOR THE PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
Donald A. Chu, PhD, PT, President